Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 78-133

HELEN RUBY, ET AL.,

Petitioners,

v.

ALBERT G. GILES, ADMINISTRATOR,
OHIO BUREAU OF EMPLOYMENT SERVICES, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR CERTIORARI

Michael N. Tousey
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MONARCH GRAPHICS, INC., Columbus, Ohio 43215

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IN THE

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No._____

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ALBERT G. GILES, ADMINISTRATOR,
OHIO BUREAU OF EMPLOYMENT SERVICES,
ET AL.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
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PETITION FOR CERTIORARI

Opinions Below

The Motion of Petitioners for an order directing the Court of Appeals for Franklin County, Ohio to certify its record was denied by the Supreme Court of Ohio without opinion. Opinions were rendered by the Court of Common Pleas and the Court of Appeals of Franklin County. Copies of the order of the Supreme Court and the opinions of the two lower courts are appended.

Grounds For Jurisdiction

By order entered March 17, 1978, the Supreme Court of Ohio overruled Petitioners' Motion for an order di-

recting the Court of Appeals for Franklin County to certify its record.

This Court has jurisdiction to consider this appeal under 28 U.S.C. Section 1257(3).

Question Presented For Review

Is the cessation of the rendering of services or a later complete termination of the employment relationship the "last total or partial separation" which defines eligibility for assistance under the Federal Trade Act of 1974, 19 U.S.C. Sections 2251 *et seq.*?

STATUTES INVOLVED

Construction of the following statutes of the United States are involved:

a. 19 United States Code 1958 ed., Section 2272 (Supp. p. 272).

b. 19 United States Code 1958 ed., Section 2291 (Supp. p. 274).

c. 19 United States Code 1958 ed., Section 2319(11) (Supp. p. 283).

The Trade Act of 1974 (P.L. 93-618), which includes the above provisions, recognizes that the ideal goal of free trade can result in economic dislocations to domestic American industries and their employees and therefore provides relief from injuries caused by import competition from foreign countries. 19 U.S.C. Sections 2251 *et seq.* This program provides for federal assistance to firms (19 U.S.C. Sections 2341-2354), communities (19 U.S.C. Sections 2371-2374) and workers (19 U.S.C. Sections 2271-2322), injured by foreign competition. Petitioners applied for assistance under the last of the three categories provided by the statute. Although the program for

workers may be administered by state employment services agencies (19 U.S.C. Section 2311), it is to be distinguished from unemployment compensation benefits in that the monetary assistance is separately funded by the federal government, not the employer, from customs duties (19 U.S.C. Section 2317); 1974 U.S. Code Congressional and Administrative News 7186, 7274).

To qualify for the program an employee must be a member of a certified group of employees injured by foreign competition. (The specific requirements for such certification by the Secretary of Labor are found in 19 U.S.C. Section 2272. *See* Appendix.) The Secretary of Labor certified all employees of the United States Shoe Corporation totally or partially separated after October 24, 1974, as such an injured group. In addition, to qualify for an allowance a worker must also meet the individual requirements found in 19 U.S.C. Section 2291, including:

> " . . .
>
> "(1) Such worker's last total or partial separation before his application under this part, occurred —
>
> "(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment, and
>
> " . . ."

As a result of the Secretary of Labor's action, all employees whose last total or partial separation occurred on or after October 24, 1974, are eligible for Trade Readjustment Assistance while those whose last total or partial separation occurred before that date are ostensibly not eligible for the assistance. The Agency and Courts below held that the separation occurred for each Petitioner on the last day she was required actually to report for work

and not on the date when the employment relationship was finally severed (thus ignoring the statutory language "*last total* or partial separation.") Thus, as the record clearly shows, although each of the Petitioners lost her employment because of the closure of the plant in the face of foreign competition, none of them have been allowed Trade Readjustment Assistance. The Board of Review and Courts below erroneously denied them assistance, asserting they missed the cut-off date by from one to twenty-four days.

STATEMENT OF THE CASE

Petitioners originally applied to the Ohio Bureau of Employment Services for Trade Readjustment Act benefits. They were denied benefits by the Bureau and pursued their remedies through the administrative system, appealing to the Court of Common Pleas of Franklin County which affirmed the decisions denying them benefits. The Court of Appeals for Franklin County reversed the Court of Common Pleas with regard to three of the claimants (thus Helen Ruby, Silva A. Radcliff and Laudie Cassel are not parties to the present petition) and affirmed with regard to all of the other claimants. The Supreme Court of Ohio denied Petitioners' Motion to Certify the Record of the Court of Appeals.

Petitioners are all former employees of United States Shoe Corporation in Columbus, Ohio. Their employment commenced at various times, the specific dates of which are not germane to the present issue. During 1974 their employer was faced with serious competition from foreign producers which were selling their products at lower prices than United States Shoe could manage. Unable successfully to meet this challenge, United States Shoe

was forced to terminate production in the Autumn of 1974.

An added result of this foreign competition was inevitable — the loss of employment by Petitioners and all other employees of United States Shoe in Columbus. Each employee was sent a notice that she would be terminated, the notice being entitled "The United States Shoe Corporation Employees' Retirement Plan Application for Termination Benefits." (Tr. 31). A copy of one of these notices was included in the file of Petitioner Phyllis M. Hawkins, and a copy of one is attached to this Petition for the convenience of the Court. In each instance this notice informed the employee that her "Termination Date" was December 31, 1974.

Although Petitioners were not formally terminated until December 31, 1974, the Board of Review found they were not required to report for work after the following dates:

Martha E. Walter	October 17, 1974
Audrey M. Grueser	October 3, 1974
Phyllis M. Hawkins	October 17, 1974
Charlotte M. Glick	October 22, 1974
Priscilla M. Riley	October 22, 1974
Zelvena J. Mills	October 17, 1974
Rose A. Gratziano	October 18, 1974
Brenda K. Brodnax	October 1, 1974
Shirley A. Burgess	October 3, 1974

Although Petitioners no longer actually performed services for their employer after the above dates, and thus did not receive hourly wages after such dates, they still continued as employees for other purposes. Thus they continued to be covered by group life insurance and medical insurance programs until their termination date, and vacation and holiday time would be honored. As witness Worley stated, "[T]hose laid off would be treated as if working." (Tr. 30).

Raising The Federal Question

The decision of the Board of Review of the Ohio Bureau of Employment Services was based on its view that each Petitioner's "last total or partial separation" occurred before the Secretary of Labor's certification date, as provided in 19 U.S.C. Section 2291. Petitioners, in their appeals to the Court of Common Pleas of Franklin County, Ohio, alleged in the Complaint that the Board's decision was based upon an erroneous interpretation of that Section. A copy of the Notice of Appeal is reprinted verbatim in Appendix.

ARGUMENT

PROPOSITION OF LAW:

A COMPLETE TERMINATION OF THE EMPLOYMENT RELATIONSHIP OCCURRING AFTER AN EARLIER CESSATION OF THE RENDERING OF SERVICES BY THE EMPLOYEE IS A "LAST TOTAL OR PARTIAL SEPARATION" WHICH DEFINES ELIGIBILITY FOR ASSISTANCE UNDER THE FEDERAL TRADE ACT OF 1974, 19 U.S.C. SECTION 2251 *et seq.*

The Secretary of Labor certified all employees of United States Shoe Corporation totally or partially separated after October 24, 1974, as such an injured group. The Petitioners ceased rendering services to their employer prior to October 24, 1974. They terminated and ceased receiving employment benefits as of December 31, 1974. Without doubt, if this latter event was a "total or partial separation", then it was the last such event, coming after the earlier "layoff". The question in this case is whether Petitioners' December 31, 1974 termination was a "separation."

The term "total separation" which is used in Section 2291, quoted above, is defined by the statute in 19 U.S.C. Section 2319(11):

> "The term 'total separation' means the layoff *or severance* of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists." [Emphasis supplied.]

The Regulations adopted by the Secretary of Labor contain a definition which is similar in its essentials:

> " 'Total separation' means the layoff *or severance* of an individual from a firm or an appropriate subdivision thereof." 29 C.F.R. Section 90.2. [Emphasis supplied.]

The meaning of the word severance is exemplified, of course, by an application of the term "severance pay" to funds paid an employee upon termination of his employment. An employee does not receive severance pay when he is laid off.

The meaning of the term "severance" was the key issue in *Republic Steel Corp. v. Maddox,* 158 So. 2d 492 (Sup. Ct. Ala. 1963), where the Court pointed out that an election to receive severance pay was a rejection of employment status which could have been retained by remaining on the unemployed list of the company.

> "Severance pay, by its definition, means compensation due an employee, upon the severance of his employment status with the employer. *He must accept his discharge as final* before any claim for severance pay can be made. A payment of severance pay by the employer and the acceptance of the same by the employee would, in our opinion, be *the complete manifestation of the termination of the*

employment relationship." 158 So. 2d 494. [Emphasis supplied.]

Petitioners, under the *Republic Steel* case would not be entitled to severance pay in October, 1974, as they had not terminated the employment relationship. Only on December 31, 1974, were they terminated, and only then did severance occur. For other cases similarly construing the word "severance" *see Owens v. Press Publishing Company,* 120 A.2d 442 (Sup. Ct. N.J. 1956); *Adams v. Jersey Central Power & Light Company,* 120 A.2d 737 (Sup. Ct. N.J. 1956); *Bolta Products Division v. Director of the Division of Employment Security,* 255 N.E.2d 357 (Sup. Jud. Ct. Mass. 1970).

Since the termination of Petitioners' employment on December 31, 1974, constituted a severance by all accepted definitions of that term, it also constituted a "total separation". The statute, 19 U.S.C. Section 2319 (11) defines "total separation" as "the layoff *or* severance." It is well recognized that the use of the disjunctive "or" indicates that the language is to be construed in an alternative sense except in very unusual circumstances. 82 C.J.S. *Statutes* Section 335. The Congress chose to specify *either* a layoff *or* severance as a total separation. Any interpretation which fails to give meaning to both of these words in the definition, whether in an administrative regulation or judicial opinion, effectively amends the statute and negates the Congressional intent.

Petitioners may have been laid off in October, but they also were clearly severed on December 31, 1974. This latter event was a "total separation", and coming after the layoff, was the *last* total separation. Under the statute, this last total separation coming within the certification period, Petitioners are entitled to the benefits which they have been denied to date.

CONCLUSION

It is submitted that the question raised by this Petition is of substance and has not heretofore been determined by this Court, that the Courts below have erred, and that this Court should fully hear this case and prepare a definitive opinion.

Respectfully submitted,

Michael N. Tousey
SEGRETI & TOUSEY CO., L.P.A.
169 East Livingston Avenue
Columbus, Ohio 43215
(614) 221-8181
Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon Raymond A. Stegmeier, Assistant Attorney General, Ohio Bureau of Employment Services, 145 South Front Street, Columbus, Ohio 43215, Attorney for Respondents, by ordinary mail this _____ day of June, 1978.

_____

Michael N. Tousey

19 U.S.C., Section 2272. ***Group Eligibility Requirements.***

"The Secretary shall certify a group of workers as eligible to apply for adjustment under this part if he determines

"(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

"(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

"(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

"For purposes of paragraph (3), the term 'contributed importantly' means a cause which is important but not necessarily more important than any other cause."

19 U.S.C., Section 2291

"Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subpart A of this part who files an application for such allowance for any week of unemployment which begins after the date specified in such certification pursuant to section 2273(a) of this title, if the following conditions are met:

"(1) Such worker's last total or partial separation before his application under this part, occurred —

"(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment, and

"(B) before the expiration of the 2-year period beginning on the date on which the determination under section 2273 of this title was made, and

"(C) before the termination date (if any) determined pursuant to section 2273(d) of this title; and

"(2) Such worker had, in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm, or, if data with respect to weeks of employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary."

19 U.S.C., Section 2319(11)

"The term 'total separation' means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists."

Form #3

THE UNITED STATES SHOE CORPORATION
EMPLOYEES' RETIREMENT PLAN
Application for Termination Benefits

Name of Employee Phyllis Hawkins Soc. Sec. No. 300-18-8389

	Month	Day	Year
Latest Date of Hire	9	00	51
Termination Date	12	31	74

In accordance with the provisions of the Employee's Retirement Plan, you will be entitled to a lump sum termination benefit if your Date of Termination is on or after the 5th anniversary of your Latest Date of Hire. If you are so entitled to such Termination Benefit, please supply the address to where the check should be sent:

6701 Harrisburg Pike
Orient, Ohio 43146

All terminating Employees should date and sign this application.

Date 10/17/74 Signature of Employee Phyllis Hawkins

(To be Completed by Office Manager)

1973 Cr. 1599.76
1974 Cr. 156.20

Location _____

Date 10/17/74 Robert R. Durham
Signature of Office Manager

For Retirement Committee Division Code ____

☐ Approved for Termination Benefits Plan ____

☐ Not approved for Termination Benefits Type ____

Accumulated Annual Credits $1,755.96

Comment _____

Date _____
For Retirement Committee

IN THE COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

Helen Ruby
87 North Westmoor Avenue :
Columbus, Ohio 43204,

Laudie Cassel
610 Rumsey Road :
Columbus, Ohio 43207,

Martha E. Walter
2257 Sullivant Avenue :
Columbus, Ohio 43223,

Audrey M. Grueser
3962 Ivorton Road, East :
Columbus, Ohio 43207,

Phyllis M. Hawkins
6701 Harrisburg Avenue :
Orient, Ohio 43146,

76CV-11-4777

Silva A. Radcliff
241 McDowell, Apt. 105 :
Columbus, Ohio 43215,

Case No. _____

Charlotte M. Glick
1118 South Ohio Avenue :
Columbus, Ohio 43206,

NOTICE OF APPEAL

Judge Marshall

Priscilla M. Riley
451 East Morrell Avenue :
Columbus, Ohio 43207,

Zelvena J. Mills
771 South 5th Street :
Columbus, Ohio 43206,

Rose A. Gratziano
2412 North High Street
Apartment 1 :
Columbus, Ohio 43202,

Brenda K. Brodnax
3749 Anwell Road, East :
Columbus, Ohio 43207,

Shirley A. Burgess
834 Hamlet Street :
Columbus, Ohio 43215,

Appellants, :

V. :

Albert G. Giles :
Administrator of the
Ohio Bureau of :
Employment Services
145 South Front Street :
Columbus, Ohio 43215,

and :

Board of Review :
Ohio Bureau of :
Employment Services :
145 South Front Street :
Columbus, Ohio 43215, :
Appellees. :

1. Notice is hereby given that the following persons hereby appeal to the Court of Common Pleas of Franklin County, Ohio, from the Decisions of the Board of Review, Ohio Bureau of Employment Services, in the cases listed below, in which the Applications to Institute Further Appeal of Appellants were disallowed, a copy of which Decisions are attached hereto, marked Exhibits "A" through "L".

a. Helen Ruby, Appellant. *In re claim of Helen Ruby,* Appeals Docket No. TRA 453669 - BR 4101-76. Mailed October 18, 1976.

b. Laudie Cassel, Appellant. *In re claim of Laudie Cassell,* Appeals Docket No. TRA 453721 - BR 4067-76. Mailed October 15, 1976.

c. Martha E. Walter, Appellant. *In re claim of Martha E. Walter,* Appeals Docket No. TRA 453386 - BR 4023-76. Mailed October 12, 1976.

d. Audrey M. Grueser, Appellant. *In re claim of Audrey M. Grueser,* Appeals Docket No. TRA 453437 - BR 4064-76. Mailed October 15, 1976.

e. Phyllis M. Hawkins, Appellant. *In re claim of Phyllis M. Hawkins,* Appeals Docket No. TRA 453438 - BR 4005-76. Mailed October 12, 1976.

f. Silva A. Radcliff, Appellant. *In re claim of Silva A. Radcliff,* Appeals Docket No. TRA 433725 - BR 4084-76. Mailed October 15, 1976.

g. Charlotte M. Glick, Appellant. *In re claim of Charlotte M. Glick,* Appeals Docket No. TRA 453436 - BR 4063-76. Mailed October 15, 1976.

h. Priscilla M. Riley, Appellant. *In re claim of Priscilla M. Riley,* Appeals Docket No. TRA 453444 - BR 4079-76. Mailed October 15, 1976.

i. Zelvena J. Mills, Appellant. *In re claim of Zelvena J. Mills,* Appeals Docket No. TRA 453561 - BR 4024-76. Mailed October 12, 1976.

j. Rose A. Gratziano, Appellant. *In re claim of Rose A. Gratziano,* Appeals Docket No. TRA 453648 - BR 4066-76. Mailed October 15, 1976.

k. Brenda K. Brodnax, Appellant. *In re claim of Brenda K. Brodnax,* Appeals Docket No. TRA 453430 - BR 4062-76. Mailed October 15, 1976.

l. Shirley A. Burgess, Appellant. *In re claim of Shirley A. Burgess,* Appeals Docket No. TRA 453885.

2. Appellants assign the following errors:

a. The decisions were unlawful in that:

(1) The Board of Review incorrectly determined Appellants' dates of separation from employment at U.S. Shoe Corporation.

(2) The Ohio Bureau of Employment Services is without jurisdiction to determine Appellants' right to Trade Readjustment Allowance benefits.

(3) Other persons who ceased rendering services to U.S. Shoe Corporation prior to October 24, 1974, received Trade Readjustment Allowance benefits.

b. The decisions were unreasonable as Appellants were separated on or after October 24, 1974.

c. The decisions were against the manifest weight of the evidence that Appellants' separations occurred on or after October 24, 1974.

d. The decisions were not based on all available evidence and appellants hereby apply to present further evidence.

3. All of the cases listed in Paragraph 1 above were consolidated for hearing before the Board of Review. Such hearing was held August 31, 1976, and a single record of each hearing was retained.

WHEREFORE, Appellants demand that this Court reverse and vacate such decisions or modify them granting Appellants' applications for Trade Readjustment Allowance benefits.

Respectfully submitted,

Michael N. Tousey (TOU 01)

SEGRETI & TOUSEY
169 East Livingston Avenue
Columbus, Ohio 43215
(614) 221-8181

Attorneys for Appellants

DEMAND FOR CERTIFIED TRANSCRIPT OF THE RECORD

Appellants hereby demand that the Board of Review file with the Clerk of the Court of Common Pleas of Franklin County, Ohio, a certified transcript of the record to include one certified transcript of the hearing of August 31, 1976, and a certified transcript of all other materials in the record of each case noticed for appeal above.

Michael N. Tousey
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal and Demand for Certified Transcript of the Record was served upon Albert G. Giles, Administrator of the Ohio Bureau of Employment Services, 145 South Front Street, Columbus, Ohio 43215, by registered mail and that a copy of the foregoing Notice of Appeal and Demand for Certified Transcript of the Record was filed with the Board of Review, Ohio Bureau of Employment Services, 145 South Front Street, Columbus, Ohio 43215, this 10th day of November, 1976.

Michael N. Tousey

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

Helen Ruby, et al., Appellants-Appellants,	:	
v.	:	No. 77AP-455
Albert G. Giles, Administrator, of the Ohio Bureau of Employment Services, et al., Appellees-Appellees.	:	

DECISION
Rendered on November 3, 1977

SEGRETI & TOUSEY,
MR. MICHAEL N. TOUSEY,
169 East Livingston Avenue,
Columbus, Ohio 43215
For Appellants-Appellants.

MR. WILLIAM J. BROWN, Attorney General,
MR. RAYMOND A. STEGMEIER, Assistant,
State Office Tower,
30 East Broad Street,
Columbus, Ohio 43215,
For Appellees-Appellees.

WHITESIDE, J.

This is an appeal from a judgment of the Franklin County Court of Common Pleas affirming a decision of The Board of Review of the Ohio Bureau of Employment Services denying appellants' prayed readjustment act benefits. In support of their appeal, appellants raise a single assignment of error, as follows:

> "The Common Pleas Court erred in holding that Appellants' last total or partial separation occurred prior to October 24, 1974."

No. 77 AP-455

The twelve appellants are former employees of the United States Shoe Corporation in Columbus, Ohio, which was forced to terminate production in late 1974 due to serious competition from foreign producers. All of the appellants were laid off from their employment with the United States Shoe Corporation in October, 1974, but with a final termination date indicated of December 31, 1974, although none of them performed any services for the United States Shoe Corporation after they were laid off. The Trade Act of 1974 (Public Law 93-618) was enacted by Congress to provide relief to employees who became unemployed because of import competition from foreign countries. Under the federal law (19 U.S.C., Section 2311), the Trade Readjustment Act benefits are administered by state employment service agencies but are distinguished from unemployment compensation benefits and are funded solely by the federal government. Each of the appellants applied for benefits under the Trade Act of 1974.

Under date of January 9, 1976, the director of the Office of Foreign Economic Policy of the United States Department of Labor made a certification pursuant to the Trade Act of 1974 that:

> "All hourly, piecework, and salaried workers engaged in employment related to the production of women's nonrubber footwear at the Columbus, Ohio plant of the United States Shoe Corporation who became totally or partially separated from employment on or after October 24, 1974, are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974."

Although appellants contend that their employment was not finally terminated until December 31, 1974, the Board of Review expressly found that the appellants last performed services for the United States Shoe Corporation on the following dates:

"Helen Ruby	October 23, 1974
Laudie Cassel	October 23, 1974
Martha E. Walter	October 17, 1974
Audrey M. Grueser	October 3, 1974
Phyllis M. Hawkins	October 17, 1974
Silva A. Radcliff	October 23, 1974
Charlotte M. Glick	October 22, 1974
Priscilla M. Riley	October 22, 1974
Zelvena J. Mills	October 17, 1974
Rose A. Gratziano	October 18, 1974
Brenda K. Brodnax	October 1, 1974
Shirley A. Burgess	October 3, 1974"

The Board of Review also found these dates to constitute the dates of separation for purposes of application of the Trade Act of 1974 and denied benefits under that act since all dates of separation so found occurred prior to October 24, 1974, the certification date. This appeal is properly taken in light of the provisions of 19 U.S.C., Section 2311(D), that determinations of a state agency with respect to benefits under the Trade Act of 1974 are subject to review in the same manner as determinations made under applicable state law, making R. C. 4141.28(0) applicable, which provides for an appeal to the Court of Common Pleas upon the issue of whether the decision of the Board of Review is "unlawful, unreasonable, or against the manifest weight of the evidence," and permits appeals from the judgment of that court "as in civil cases." With respect to the benefits which appellants seek, 19 U.S.C. Section 2291, provides:

> "Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subpart A of this part who files an application for such allowance for any week of unemployment which begins after the date specified in such certification pursuant to section 2273(a) of this title, if the following conditions are met:

> "(1) Such worker's last total or partial separation before his application under this part, occurred —
>
> "(A) on or after the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment, and

The term "total separation" is defined by 19 U.S.C., Section 2319(11), as follows:

> "The term 'total separation' means the layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists."

Regulations adopted by the Secretary of Labor contain a similar definition in 29 C.F.R., Section 90.2. A further definition is contained in said regulations, 29 C.F.R., Section 91.3(29), as follows:

> "'Total separation' means a layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists."

In addition, the regulations [29 C.F.R., Section 91.2(15)] define "employment," as follows:

> "'Employment' means any service performed for an employer by an individual for wages or by an officer of a corporation."

The regulations also contain a definition of "layoff" [29 C.F.R., Section 91.3(21)], as follows:

> "'Layoff' means a suspension from pay status for lack of work initiated by an employer and expected to be for a definite or indefinite period of not less than 7 consecutive days."

The record supports the findings by the Board of Review that the last dates that the various appellants performed services for the United States Shoe Corporation were on the dates set forth above. In order to be entitled to benefits, the last "total separation" date must have occurred on or after October 24, 1974, the certification date made by the Department of Labor. For purposes of this case, to constitute last "total separation," there must have been severance of the employee from employment, which is defined as performing services for wages.

Accordingly, for purposes of computing benefits under the Trade Act of 1974, "total separation" occurs on the first day on which the employee no longer performs services for the employer, whether due to a layoff or final termination.

The record reflects that none of the employees involved either performed services or were paid wages for any days subsequent to the dates set forth above, although they did receive certain fringe benefits thereafter. Accordingly, pursuant to the applicable definitions, the last "total separation" of appellants from employment with the United States Shoe Corporation occurred on the day following the last day on which they performed services for the United States Shoe Corporation and for which they received wages, which are the dates set forth above as found by the Board of Review.

However, it appears that the Board of Review improperly equated the last day of employment with "total separation." Under the applicable definitions, separation does not occur on the last day of employment but, rather, necessarily occurs on the first day of unemployment. An employee cannot be considered severed from employment on a day on which he is fully employed. The severance, of necessity, occurs on the first day of unemployment, rather than the last day of employment.

Although all of appellants may have been equally affected by the impact of foreign competition as employees severed from employment on or after October 24, 1974,

the certification date, neither this court, nor the Board of Review, can substitute its judgment for that of the Department of Labor as to the appropriate certification date. The Board of Review was bound by the certification date established by the Department of Labor and could not grant benefits to anyone whose "total separation" occurred prior to the certification date. It appears clearly from the evidence that the last "total separation" date of all but three of the appellants occurred prior to October 24, 1974. However, with respect to appellants Ruby, Cassel, and Radcliff, the record, and the findings of the Board of Review, indicate that their last day of employment was October 23, 1974, making their last "total separation" date October 24, 1974, and, therefore, they are entitled to benefits in accordance with the Department of Labor's certification that employees "at the Columbus, Ohio, plant of the United States Shoe Corporation who became totally or partially separated from employment on or after October 24, 1974, are eligible to apply for adjustment assistance."

For the foregoing reasons, the assignment of error is sustained as to appellants Ruby, Cassel, and Radcliff and is overruled as to all other appellants; and the judgment of the Franklin County Court of Common Pleas is reversed as to appellants Ruby, Cassel, and Radcliff and is affirmed as to all other appellants; and this cause is remanded to that court for entering of the appropriate judgment in accordance with law consistent with this decision.

Judgment reversed in part and remanded.

STRAUSBAUGH, P.J., and HOLMES, J., concur.

IN THE COURT OF APPEALS OF FRANKLIN COUNTY, OHIO

Helen Ruby, et al.,	:	
Appellants-Appellants,	:	
	:	No. 77AP-455
V.		
Albert G. Giles, Administrator,	:	
of the Ohio Bureau of	:	
Services, et al.,	:	
Appellees - Appellees.	:	

JOURNAL ENTRY OF JUDGMENT

For the reasons stated in the decision of this court rendered herein on November 3, 1977, the assignment of error is sustained as to appellants Ruby, Cassel, and Radcliff, and is overruled as to all other appellants, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed as to appellants Ruby, Cassel, and Radcliff and is affirmed as to all other appellants, and this cause is remanded to that court for the entering of the appropriate judgment in accordance with law consistent with said decision.

STRAUSBAUGH, P.J., HOLMES and WHITESIDE, JJ

By (s) Alba L. Whiteside

Judge Alba L. Whiteside

CC: Michael N. Tousey
Raymond A. Stegmeier

COURT OF COMMON PLEAS,
FRANKLIN COUNTY, OHIO

Helen Ruby, et	:	
Appellants	:	
vs	:	Case No.
Albert G. Giles, Administrator	:	76CV-11-4777
Ohio Bureau of Employment	:	
Services, et al	:	
APPELLEES		

DECISION
AND
JOURNAL ENTRY

Rendered this 7th day of June, 1977.

MARSHALL, J.

Appellants had applied for Trade Readjustment Allowances or TRA benefits, which they claim they were entitled to as qualified workers under authority of the Trade Act of 1974. They are former employees of United States Shoe Corporation in Columbus, Ohio, which was forced to terminate production in the Autumn of 1974, due to serious competition from foreign producers who could sell at lower prices than this employer could meet.

To become eligible for benefits under the TRA Program a worker must first be found to have been separated, totally or partially, from his employment on or after the date specified as the impact date by the Secretary of Labor in his certification.

All of the Appellants were found to have become unemployed before the date specified by the Secretary of Labor, namely October 24, 1974. In the decision of the Administrator it was held that the latest separation was October 23, 1974. These decisions were affirmed by the Referee in his findings of fact. Appellants appealed to the Board of Review which denied the claims in a decision that held all appellants were separated before October 24, 1974.

The issue centers upon the construction of 19 U.S.C. Section 2291 that requires an employee's "Last total or partial separation: occur on or after the impact date to be eligible for benefits.

The facts in this case show Appellants were separated from their employment prior to the date set forth in the Secretary of Labor's certification.

Because of the lay-offs of Appellants occurred before the impact date specified by the Secretary of Labor they are precluded from obtaining TRA benefits.

The decision of the Board that Appellants were separated before October 24, 1974, reasonable and within the manifest weight of the evidence.

_____

Judge

APPEARANCES:
Michael N. Tousey,
Attorney for Appellants

William J. Brown,
Attorney General
by Raymond A. Stegmeier
Assistant Attorney General

. . . . . .

OPINIONS OF THE OHIO BUREAU OF EMPLOYMENT SERVICES

Included in this Appendix are the decision of Referee James A. Lowe, Board of Review, Ohio Bureau of Employment Services, Appeals Docket No. 453387 TRA, issued August 31, 1976 and the Decision of the Board of Review on application to institute a further appeal issued October 12, 1976, as rendered in the case of Petitioner Martha E. Walter. Similar decisions without material differences were rendered with regard to each of the Petitioner's and burdening the file with copies of each at this juncture appears unnecessary.

BOARD OF REVIEW
Ohio Bureau of Employment Services
145 South Front Street P.O. Box 1618
Columbus, Ohio 43216

In re claim of: Employer:
MARTHA E. WALTER
2257 Sullivant Avenue
Columbus, Ohio 43223

S.S. No. 289-05-8397

DECISION

By a decision on reconsideration, mailed July 28, 1976, the Administrator held that the claimant was not entitled to basic Trade Readjustment Allowances because the claimant's separation from U.S. Shoe Company occurred before the Certification Impact Date.

On August 2, 1976, claimant filed a timely appeal.

Hearing Date: August 31, 1976.
Place: Columbus, Ohio.

Claimant was duly notified of the date, time and place of hearing.

Appearances: Claimant appeared in person with one witness, Edna Worley.

(The record of this case will be found in Appeals Docket No. 453793-TRA, in re Grace R. Adkins.)

FINDINGS OF FACT:
Prior to filing her Request for Determination of Entitlement to TRA, claimant had employment with United States Shoe Corporation in Columbus, Ohio from October 28, 1957 to October 17, 1974. On the latter date, claimant was laid off due to lack of work for an indefinite period of time.

On January 9, 1976, the Secretary of Labor in accordance with Chapter 2, Subchapter A, Sec. 222 of Public Law 93-618, issued the following certification:

> "All hourly, piecework, and salaried workers engaged in employment related to the production of women's nonrubber footwear at the Columbus, Ohio plant of the United States Shoe Corporation who became totally or partially separated from employment on or after October 24, 1974, are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Trade Act of 1974."

REASON:

Issue: Entitlement to Trade Readjustment Allowance.

Subchapter B, Part 1, Sec. 231 of Public Law 93-618 provides in part as follows:

> "Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subchapter A who files an application for such allowance for any week of unemployment which begins after the date specified in such certification pursuant to section 223 (a), if the following conditions are met:
>
> "(1) Such worker's last total or partial separation before his application under this chapter, occurred -
>
> "(A) on or after the date, as specified in the certification under which he is covered, * * *."

From the above it is quite apparent that the claimant's total or partial separation from employment with United States Shoe Corporation in the Columbus, Ohio plant had to occur on or after the impact date of October 24, 1974, as set forth in the certification issued by the Secretary of Labor on January 9, 1976, if the claimant is to be found entitled to a Trade Readjustment Allowance.

The Secretary's Regulations for Implementing the Worker Adjustment Assistance Program of the Trade Act of

1974, as published in the Federal Register on March 13, 1975, sets forth the following definitions:

> "'Total separation' means a layoff or severance of an individual from employment with a firm in which, or in a subdivision of which, adversely affected employment exists.
>
> "'Layoff' means a suspension from pay status for lack of work initiated by an employer and expected to be for a definite or indefinite period of not less than 7 consecutive days.
>
> "'Partial separation' means that during a week beginning on or after the impact date stated in an applicable certification an adversely affected worker who has not been totally separated had:
>
> "(i) hours of work reduced to 80 percent or less of the individual's average weekly hours, and
>
> "(ii) wages reduced to 80 percent or less of the individual's average weekly wages in adversely affected employment."

The evidence before the Referee clearly shows that the claimant's separation from employment with United States Shoe Corporation occurred prior to the impact date of October 24, 1974, a date which the Referee has no authority to change, therefore, the Referee must affirm the Administrator's decision on reconsideration, mailed on July 28, 1976, which held that the claimant was not entitled to basic Trade Readjustment Allowances.

DECISION:

The Administrator's decision on reconsideration, mailed July 28, 1976, is hereby affirmed.

(s) A. James Lowe

A. James Lowe, Referee

Date of Mailing: August 31, 1976

4

L.O. 173-0

An application to institute further appeal before the Board of Review may be filed by any interested party within fourteen (14) days after the date of mailing of this decision.

. . . . . .

BOARD OF REVIEW
Ohio Bureau of Employment Services
145 South Front Street P.O. Box 1618
Columbus, Ohio 43216

In re claim of: Employer:

MARTHA E. WALTER
2257 Sullivant Avenue
Columbus, Ohio 43223

S.S. No. 289-05-8397

DECISION

On September 7, 1976, claimant filed an application to institute a further appeal before the Board of Review, pursuant to the provisions of Section 4141.28, Revised Code of Ohio, from the decision of the Referee dated August 30, 1976.

Issue(s): Entitlement to Trade Readjustment Allowance.

Upon consideration thereof, and upon a review of the entire record, the Board concludes that said application to institute a further appeal should be disallowed.

DECISION:

Said application to institute a further appeal is hereby disallowed.

BOARD OF REVIEW

(s) Willard D. Campbell

Willard D. Campbell, Chairman

(s) John E. Jones

John E. Jones, Member

(s) Frances M. Brockmeyer

Francis M. Brockmeyer, Member

Date of Mailing:
October 12, 1976
L.O. 173-0

An appeal from this decision may be filed in a Court of Common Pleas within thirty (30) days from the date of mailing, in the manner set forth in Section 4141.28 (O), Revised Code of Ohio.

Form BR-3 (Rev. 3-74)

Appeals Docket No. TRA 453386-BR
4023-76

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO,
City of Columbus.

1978 TERM
To wit: March 17, 1978

Helen Ruby et al.,
Appellants,

VS.

Albert G. Giles, Admr., Ohio Bureau of Employment Service et al.,
Appellees.

No. 78-16

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS

for FRANKLIN *County*

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20,000, paid by Michael N. Tousey

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and seal of the Court
this .....day of.....19.....
..... Clerk
..... Deputy

Supreme Court, U. S.
FILED
AUG 11 1978
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1977
No. 78-133

HELEN RUBY, et al.,
Petitioners,
vs.
ALBERT G. GILES, ADMINISTRATOR,
OHIO BUREAU OF EMPLOYMENT SERVICES, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM J. BROWN
Attorney General, State of Ohio

RICHARD A. SZILAGYI
Assistant Attorney General

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ARGUMENT

PROPOSITION OF LAW:

OHIO'S POSITION THAT A "TOTAL SEPARATION" WITHIN THE MEANING OF 19 U.S.C. SECTION 2291 OCCURS "ON THE FIRST DAY ON WHICH THE EMPLOYEE NO LONGER PERFORMS SERVICES FOR THE EMPLOYER, WHETHER DUE TO A LAY-OFF OR FINAL TERMINATION" IS A PROPER STATUTORY INTERPRETATION OF THE FEDERAL STATUTE.

This petition centers upon the interpretation of a section of the Trade Act of 1974 that determines at what point in time a worker may become eligible for Trade Readjustment Allowances (TRA). The section, 19 U.S.C. Section 2291, provides:

> "Payment of a trade readjustment allowance shall be made to an adversely affected worker covered by a certification under subpart A of this part who files an application for such allowance for any week of unemployment which begins after the date specified in such certification pursuant to section 2273(a) of this title, if the following conditions are met:
>
> "(1) Such worker's last total or partial separation before his application under this part, occurred
>
> (A) on or before the date, as specified in the certification under which he is covered, on which total or partial separation began or threatened to begin in the adversely affected employment, and "* * *"

The Trade Act also defines the term "total separation" at 19 U.S.C. Section 2319(11):

> "The term "total separation" means the lay-off or severance of an individual from employment with a firm in which, or in a sub-division of which, adversely affected employment exists.

This petition results from the Ohio Supreme Court's refusal to grant a motion by petitioner that the Ohio Court of Appeals for Franklin County certify its record to that court. By so refusing the Ohio Supreme Court has found no case of public or general interest in the interpretation that the lower court has given to these two sections of federal law in light of the purpose of the Trade Act of 1974 and the regulations promulgated concerning the Act. The specific issue that is the focus of this petition is the question whether any or all of the petitioners were totally separated on or after the date certified by the Secretary of Labor as the "impact date", October 24, 1974.

The impact date is the earliest date on which separations from the business can be attributed to increased foreign competition. 19 U.S.C. Sections 2272-2273 (See Appendix) It should be emphasized that this date is not arbitrary, but rather, it is subject to review had petitioners chosen to challenge the Secretary's finding pursuant to 19 U.S.C. Section 2322 (See Appendix) which provides for review by the United States Court of Appeal in the district where petitioners are located if filed within sixty days of the certification of the impact date. Petitioners, however, have chosen not to challenge the impact date of October 24, 1974.

Petitioners have chosen to center upon the meaning which should be given to "total separation" as required by 19 U.S.C. Section 2291. Petitioners have consistently adhered to the proposition that "total separation" is the complete termination of the overall employment relationship. Their view is that a cessation of services such as a lay-off is not a "total separation" when it is followed later by the termination of employment benefits (e.g. health insurance). This situation, petitioners argue, demands that the date of the termination of these benefits be viewed as the date of the "total separation". It is respondent's position, however, that such a conclusion would create tremendous hardship in the administration of the TRA program and pose serious equal protection challenges to the TRA program.

The flaw that would emasculate TRA's effectiveness is that petitioner's argument would place workers who are indefinitely laid-off with their employment or "fringe" benefits ended at the same moment in a much different position than workers such as petitioners who are indefinitely laid-off but whose "fringe" benefits are allowed to continue for a longer period of time. Such disparity reveals not only the blatant equal protection problems which would arise, and should require no further comment, but would also present the Bureau of Employment Services, as the State agency responsible for the administration of the TRA program, with an unmanageable burden. No longer would the lay-off date have significance to whether the worker qualifies for the benefits, but rather, some date on which the employers-employee health insurance or life insurance program ends would become the critical factor. Requiring the Bureau to identify such possible dates would put additional, unnecessary paper work into a system that is designed to function by the use of a lay-off or severance date that is easily provided by the worker and conveniently verified by the employer.

The record cogently establishes that the petitioners herein were indefinitely laid-off from their employment. In fact, each petitioner so testified at the hearing held by the Referee of the Board of Review. And, it must be noted that petitioners have not challenged this finding of fact and therefore have removed the question whether they were laid-off from judicial review. The Trade Act of 1974 specifically states:

> A determination by a cooperating state agency with respect to entitlement to program benefits under an

> agreement is subject to review in the same manner and to the same extent as determinations under the applicable state law and only in that manner and to that extent. 19 U.S.C. 2311 (d)

In this regard, Ohio law mandates that factual questions are primarily within the province of the Referee and the Board of Review and a court may reverse only when these factual questions are answered in a manner contrary to law or against the manifest weight of the evidence. *Brown-Brockmeyer v. Roach,* 148 Ohio St. 511 (1947).

The unchallenged fact that petitioners have been, as the Referee has noted, "laid-off due to lack of work for an indefinite period of time" establishes conclusively that the court below has not erred in its finding that all but three of the petitioners were not eligible for TRA benefits. As already stated, the crucial question in this petition is the determination of the date of petitioner's "total separation." The Ohio Court of Appeals' opinion for the unanimous court below states unequivocally that "for purposes of computing benefits under the Trade Act of 1974, 'total separation' occurs on the first day on which the employee no longer performs services for the employer, whether due to a *lay-off* or final termination." (Emphasis added) *Ruby et al. v. Giles, et al.,* Court of Appeals of Franklin County, Ohio, November 3, 1977 at p. 3955.

As noted, the definition of "total separation" provided by the Act itself requires that petitioners be laid-off or severed from employment. Employment is defined by the regulations adopted by the Secretary of Labor pursuant to the Act (see Appendix 19 U.S.C. 2320) as "any service performed for an employer by an individual for wages or by an officer of a corporation." 29 C.F.R. Section 91.3 (15). Thus, in order to be employed one must be performing services of some sort for the employer. The court below has held accordingly: "For the purposes of this case, to

constitute last 'total separation,' there must have been severence of the employee from employment, which is defined as performing services for wages." (*Ruby, supra,* at p. 3954)

That the petitioners were not performing services for their employer after the dates indicated as their date of separation is beyond question. Petitioners have themselves so admitted in their petition for certiorari at p. 5 where they state "although Appellants *no longer performed services* for their employer after the above dates, and thus did not receive hourly wages after such dates, they still continued as employees for other purposes." (Emphasis added) The explanation given for these "other purposes" is that they continued to receive certain fringe benefits that were not discontinued until December 31, 1974. But, as the court below has correctly recognized from the Act, a worker has to be separated by reason of a lay-off or severance from employment, which has been defined as including the performance of services. Petitioners each were asked by the Referee of the Board of Review whether they performed any services after their dates of separation. To a person, each testified that she did not.

It is therefore quite evident that the court below has not erred in its decision that all but three of the petitioners have not qualified for TRA benefits. Further, the Court has provided a workable and reasoned interpretation of the Act's definition of "total separation", particularly the day on which it occurs. The court has stated at p. 3955:

> Under the applicable definitions, separation does not occur on the last day of employment, but, rather, necessarily occurs on the first day of unemployment. An employee cannot be considered severed from employment on a day on which he is fully employed. The severance, of necessity, occurs on the first day of unemployment, rather than the last day of employment.

With this interpretation, the Bureau of Employment Services can effectively administer the TRA program without the administrative burden that petitioner's argument would provide. The Bureau simply has to check to see the last day worked and then compare the next work day which follows that day with the impact date to see if the worker is eligible. The Ohio Court of Appeals did this, for example, with the three petitioners who were determined eligible in this appeal. Their separation date had been October 23, 1974 — the date of their indefinite lay-off. The next day they could have worked was October 24, 1974, which coincidently was the impact date. The Act requires that the last total separation occur on or after the impact date so in their case they qualified for the TRA benefits.

CONCLUSION

Respondents respectfully submit that this petition does not warrant review by this Court because the interpretation given to the federal statute by the Ohio Courts does not violate any norms of statutory construction, nor does it jeopardize the effectiveness and congressional purpose of the TRA program. This Court has long held that petitions involving statutory construction must be of major importance before certiorari will be granted. Various elements considered in whether the petition reaches the level of importance include whether the issue is significant in the administration of the statute, e.g. *United States v. Rujicka,* 329 U.S. 287 (1946) and whether the issue will seriously hinder the effective administration of the statute, e.g. *Rothensies v. Electric Battery Co.,* 329 U.S. 296 (1946). The interpretation that has been given to the contested statute does not hinder the administration of the TRA program but in fact increases its effectiveness by easing the burden of determining one's eligibility with

regard to the impact date. For these reasons, respondents urge that this petition be denied.

Respectfully submitted,

WILLIAM J. BROWN
Attorney General, State of Ohio

RICHARD A. SZILAGYI
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari was mailed to Michael N. Tousey, Segreti & Tousey Co., L.P.A., 19 East Livingstone Avenue, Columbus, Ohio 43215 on this the ..... day of August, 1978.

RICHARD A. SZILAGYI
Assistant Attorney General

APPENDICES

19 U.S.C. Sections 2272, 2273

§ 2272. Group eligibility requirements

The Secretary shall certify a group of workers as eligible to apply for adjustment assistance under this part if he determines –

(1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

§ 2273. Determinations by Secretary of Labor – Certificate of eligibility

(a) As soon as possible after the date on which a petition is filed under section 2271 of this title, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 2272 of this title and shall issue a certification of eligibility to apply for assistance under

this part covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

Workers covered by certification

(b) A certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm before his application under section 2291 of this title occurred –

(1) more than one year before the date of the petition on which such certification was granted, or

(2) more than 6 months before the effective date of this part.

Publication of determination in Federal Register

(c) Upon reaching his determination on a petition, the Secretary shall promptly publish a summary of the determination in the Federal Register together with his reasons for making such determination.

Termination of certification

(d) Whenever the Secretary determines, with respect to any certification of eligibility of the workers of a firm or subdivision of the firm, that total or partial separations from such firm or subdivision are no longer attributable to the conditions specified in section 2272 of this title, he shall terminate such certification and promptly have notice of such termination published in the Federal Register together with his reasons for making such determination. Such termination shall apply only with respect to total or partial separations occurring after the termination date specified by the Secretary.

§ 2320. Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this part.

§ 2322. Judicial review

(a) A worker, group of workers, certified or recognized union, or an authorized representative of such worker or group, aggrieved by a final determination by the Secretary under the provisions of section 2273 of this title may, within 60 days after notice of such determination, file a petition for review of such determination with the United States court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit. The clerk of such court shall send a copy of such petition to the Secretary. Upon receiving such petition, the Secretary shall promptly certify and file in such court the record on which he based such determination.

(b) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.